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I.

ON THE NOMINATION OF AGENTS FORMERLY
APPOINTED TO ACT IN ENGLAND FOR THE
COLONIES OF NORTH AMERICA.

II.

A BRIEF STATEMENT OF THE DISPUTE BE-
TWEEN SIR C. METCALF AND THE HOUSE
OF ASSEMBLY OF THE PROVINCE OF
CANADA.

1844.

T. Falconer author

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PREFACE.

THE two following Letters were written in reply to an inquiry respecting the appointment of Agents in England for the English Colonies in North America, previously to the declaration of their Independence. The first is from Mr Bancroft, the distinguished author of the 'History of the United States,' a work of great learning and ability. The second is from Mr Sparks, the author of many very interesting biographies of persons eminent in the history of the settlement of America. The practice which these letters illustrate was pursued on several occasions by the House of Assembly in Canada. The inefficiency of military governors in the civil government of that province—their partial and almost corrupt representations of the state of the country—and the astounding ignorance of the Colonial office respecting its public institutions and its politics, made such appointments urgently necessary. In some instances their results were, as in 1827, very useful to the Government at home as well as satisfactory to those by whom the appointments were made. The Agent was commissioned by a vote of

the House of Assembly only—"a Bill for the appointment of an Agent having been regularly introduced and passed by the Assembly every year, almost for the last thirty years (previously to 1836), and as regularly thrown out by the Legislative Council."

The last appointment of Agent made by the House of Assembly of that province was of Mr Roebuck, M.P. A salary was voted as in the case of Edmund Burke, when appointed by the House of Assembly of New York the Agent in England for that colony, with an additional sum for the payment of contingencies. This payment, however, was suspended in consequence of several prorogations of the Provincial Parliament without a vote of supply having been passed. Mr Roebuck, nevertheless, acted as Agent, and was heard in that capacity before both Houses of Parliament in opposition to the Bill to suspend the Constitution of the Province. When a new constitution was granted by Parliament, it was enacted, that no vote of money should be made by the Assembly without the recommendation of the Crown. This power has not been exercised to advise the payment of the previous obligation of the House of Assembly, and the payment has thus been prevented of the salary due to Mr Roebuck, and even of the expenses incurred in his defence of the people of Canada before Parliament—a defence made when he was not a member of the House of Commons. Higher obligations may hereafter be repudiated, and it ought to be

remembered by whom an example of such dishonour was first exhibited — though in this instance it may be without effect. It would have been unjust to have denied even the form of an hearing to the people of Canada when all their constitutional privileges were about to be taken from them — and if an hearing was granted to avoid such injustice, it certainly was not honourable to charge the expenses connected with it on the advocate — even had there been no vote of the House of Assembly entitling him to a payment for his services, and the repayment of his expenses.

T. F.

London, August 18, 1844.

* * * I add the following Letter which I have received since writing the above : —

Liverpool, August 20, 1844.

MY DEAR FALCONER,

Mr Bancroft's letter contains information interesting to all those who pay attention to the history of English Colonization. It is a page that might well be inserted in his great work on that subject, and deserves on many accounts to be published.

The ignorance which led some persons to make flippant and insolent attacks upon me because I was Agent to the House of Assembly of Lower Canada was, and is, so general that I could well excuse it, even in those who, by assuming the character of legislators, had incurred the obligation of learning the colonial history of this country : — of the ill feeling and petulance of these attacks I need not now speak. If they who made them were satisfied with their success, so was I ;

for I am vain enough to believe that I did not come worsted out of the encounter. The incident may possibly afford an opportunity for writing some poor conceit, and then complacently calling it an "historic fancy."

The conduct of Lord John Russell on the question was, however, a very different proceeding. He could not have been ignorant of the fact, that our American Colonies, now forming the United States of America, had Agents in this country, representing the popular branch of their separate Legislatures. He also well knew that Mr Burke was among the latest of these Agents, as he was indeed the most celebrated of them. I leave it for his panegyrists to explain why, under such circumstances, he moved the previous question upon Sir John Hanmer's motion (in 1836) respecting myself acting as Agent of the Assembly of Lower Canada in place of meeting it with a direct negative.

The House of Assembly of Lower Canada had long desired to concur with the Legislative Council in appointing an Agent, and they proposed Sir James Macintosh. Sir James was, however, far too liberal to suit the fancy of the close corporation called the Legislative Council, and the attempt of appointing a joint Agent failed. At length the Assembly determined to appoint a person who should represent themselves alone, and they did me the honour of selecting me for that honourable office. To this office they attached a salary; and I did not conceive that I was precluded from accepting their offer because I was a member of the House of Commons. So soon as it became necessary to communicate with the Home Government, I wrote to Lord Glenelg, requesting that I might be permitted to wait on him in the character of Agent of the House of Assembly. To this application I received for answer, that Lord Glenelg would willingly see me, because I proposed to be received as Agent only of the House of Assembly, and not as the Agent of the province. From time to time I trans-

acted business with the then Administration as the Agent of the Assembly. In that character I watched over their interests in the House of Commons, presented petitions on their behalf, and, on many important occasions, I spoke as one having the authority of the Assembly to express their wishes and opinions. Under these circumstances a motion was made in the House of Commons to the effect (I do not recollect the exact words) that no member ought to "become the paid Agent in Parliament for the conduct there of either public or private affairs of any portion of her Majesty's subjects ;"* and it was on this motion that Lord John Russell moved the previous question, which proceeding has always appeared to me a very unworthy evasion. There was no reason why the House should not express an opinion either for or against the motion. The point was one of great importance, and ought to have been settled ; but Lord John Russell was probably unwilling to cast a slur upon the memory of Burke, Huskisson,† and many others who had acted as paid Agents for colonies. If, however, he believed that such an office was incompatible with the character of a representative of the people, he ought openly to have avowed his opinions, spite of his predilections respecting Mr Burke. If he thought that no such incompatibility existed, he ought to have made known this opinion in spite of his ill will towards myself.

I acted, as you know, as Agent for the Assembly up to the date of the destruction of the Constitution of Lower Canada.

* This proposal would have swept the Ministry out of the House.—T. F.

† The return of Mr Huskisson for the borough of Liskard was petitioned against upon account of his holding the office of Agent for the island of Ceylon. It was contended that it was "a new office under the Crown," and that by holding it he was incapacitated by the 6th Ann, c. 7, to be returned. It was admitted to be a new office ; that the salary (700l.?) was paid out of the revenues of the island ; and that the appointment was made by the government of the island, *in consequence of directions from the Secretary of the Colonies*,—but the return was held good.—2 *Roe*, 195.

I enjoyed their confidence to the last, and I shall ever consider my connexion with that most unjustly condemned and much calumniated Assembly of Lower Canada among the most honourable incidents of my life. No people had ever more faithful or honest representatives, and every hour is bringing fresh proof of the gross mistake committed by the Imperial Parliament when it united the French-Canadian Legislature with the Anglo-American Assembly of Upper Canada. The United Legislature will make demands no less distasteful than those of the separate assemblies,—difference of race cannot again be given as a reason for refusal, and the cry for Responsible Government will be found irresistible.

I am, yours affectionately,

Thomas Falconer, Esq.

J. A. R.

LETTERS, ETC.

GEORGE BANCROFT, ESQ., OF BOSTON, MASSACHUSETTS, TO CHARLES
SUMNER, ESQ., BARRISTER-AT-LAW, OF BOSTON.

Boston, July 12, 1844.

MY DEAR SUMNER,

Nearly every Colony had its Agent in England to manage such affairs as the Colonies would not trust to the Governor, or such as required personal attention in England. These Agents did not correspond with the Governor, but with the popular branch of the Legislature; and their appointments were usually made independent of the Colonial Governors. In Maryland the Proprietary's Deputy refused to permit of the appointment of an Agent; and as there could be no appropriation, the Assembly named one, whose expenses were defrayed by voluntary subscription. In Georgia, when William Knox, afterwards Under-Secretary of State, was dismissed in 1765, I find that William Garth was chosen by the House, but the choice was negatived by the Governor. In most of the Colonies the choice was made irrespective of the Royal Council or the Royal Governor.

Members of Parliament, and persons in official station, were often elected Agents. Thus in 1755 John Sharpe,* then

* In the 'Parliamentary History' (vol. xv, p. 299), John Sharpe, who was M.P. for Callington, is described as "Solicitor to the Treasury." On his death a new writ was ordered, Dec. 2, 1766, when William Fane Sharpe was elected to succeed him.

Secretary to the Privy Council, and, I think, a member of Parliament, was elected Agent for Massachusetts; but as Massachusetts had interests adverse to the islands, Sharpe, who was agent for Jamaica, Barbadoes, Antigua, and Nevis, declined the appointment.

Charles Garth,* a member of Parliament, a very prudent and sensible man, was long the Agent for South Carolina. His Letters were addressed to an annually renewed Committee of the House, and, running through the period of 1765 to 1775, furnish the fullest account in existence of the debates of the House of Commons. But for his letters, there would be a *vacuum* in the relation of English history.

Edmund Burke was elected Agent for New York by the Assembly, after having been previously proposed without success. He was the candidate of the more Conservative part of the Assembly; the Radicals, George Clinton among them, voting for Sayre. Burke corresponded with a Committee of the House, and his letters were not within the reach of the Governor.† Nor were they placed on the public files; and I may add generally that the letters of the Agents were kept entirely private by the respective Committees. Burke's salary was 500*l.*; and I have seen it stated, that his whole emoluments as Agent for New York were equal to 1,000*l.* annually.

Richard Jackson, who was secretary to the Chancellor of the Exchequer during the administration of George Grenville,

* M.P. for Devizes. He was first elected in 1765, on the death of his father, who was M.P. for this borough; and again in 1768 and 1774.

† In a volume published in America, entitled, 'Lives of the Signers of the Declaration of Independence of the United States,' is the following passage:—"Previous to the Revolution it was usual for the respective Colonies to have an Agent in England to manage their individual concerns with the British Government. This Agent was appointed by the *popular branch of the Legislature*. In 1770 the Agent of the Colony of New York dying, the celebrated Edmund Burke was chosen in his stead, and received for the office a salary of 500*l.* Between him and a committee of the *Colonial Assembly* a correspondence was maintained; and upon their representation the Agent depended,

long a Member of Parliament,* afterwards Law Adviser to the Board of Trade, and in 1782 one of the Lords of the Treasury, was the best of the English whom the Colonies employed. He was a man of honour, of talent, of good judgment, and of fortune. For Connecticut he long acted as Agent, till he became attached to the Board of Trade; for Massachusetts and for Pennsylvania he was Agent for shorter periods. Massachusetts distrusted him without cause. He knew how to combine in an admirable manner his duty to England and to his constituents in America; and if the Ministry would have listened to his discreet advice, our Revolution would have been long delayed. For Connecticut he corresponded with the Governor; who, you will remember, was not appointed by the king, but chosen by the people: in Massachusetts his correspondent was connected with the Legislature, and he was displaced by the popular branch of the Legislature alone.

In Pennsylvania, Franklin, as well as his predecessor, was appointed solely by the House. The Governor was not even informed of the instructions and business entrusted to him.

In Massachusetts, as the times of trouble drew nearer, the House of Representatives had its own special agent, Benjamin Franklin; and the Council, which in Massachusetts was an elected body, had also its agent, William Bollan. So entirely was Franklin the Agent of the House, in its popular capacity

for a knowledge of the state of the Colony. Of this Committee Philip Livingston was a member. From his communications and those of his colleagues Mr Burke doubtless obtained that information of the state of the Colonies which he sometimes brought forward to the perfect surprise of the House of Commons; and upon which he often founded arguments and proposed measures which were not to be resisted."

Philip Livingston was one of the chief of those who signed the Declaration of Independence; but the party malice of those days did not impute it as a fault to Mr Burke that he was his correspondent or a "paid" Agent.

* M.P. for New Romney, 1774. Appointed one of the Lords of the Treasury July 13, 1782; Lord Sheburne being at the head of the Commission.

as a separate existence, that the Governor obtained accounts of his letters only surreptitiously; and several of them are now in my collection unpublished.

I could make a long but not a perfect catalogue of Agents. Their names appear only on occasions of more than common interest. I have official letters showing the form of their appointment and commission, and the manner of notifying to them with whom they should correspond. Any of these papers are at your service.

Commend me very kindly to Falconer, whose last visit I missed, having been absent from Boston for two or three days, to my lasting regret. Urge him to publish all that he knows of *La Salle*. Now is the golden moment.

Yours ever,

Charles Sumner, Esq.

G. BANCROFT.

P.S. I have one entire letter of Burke's on the Quebec Bill, which if you read will give to you a good idea of the degree of attention shown to him as Agent by Lord Dartmouth and Lord North. He was listened to as having authority, and duly representing a body which was respected and heard even if its wishes were not complied with.

JARED SPARKS, ESQ., TO CHARLES SUMNER, ESQ.

Cambridge [Massachusetts], May 27th, 1844.

MY DEAR SIR,

On the next leaf is an extract from the Journal of the New York Assembly, by which you will see the time of Burke's appointment as Agent, and the amount of his salary.

After the restoration of Charles the Second it was customary for all the colonies to have Agents in London for the management of their affairs, to whom a salary was given. They were appointed by the Assemblies, and confirmed by the Governor and Council, from whom they received their credentials. On some occasions special Agents were sent for a particular object. Sometimes the standing Agents were Americans; but more commonly, I think, they were natives of Great Britain, resident in London, either distinguished lawyers or merchants, more commonly the former. For several years immediately preceding the Revolution, Franklin was the Agent of four colonies, Pennsylvania, Massachusetts, New Jersey, and Georgia. He was first sent out as a Special Agent by the Assembly of Pennsylvania to prosecute before the British Government a dispute between the Assembly and the Proprietaries.

I have said that it was usual for the Agent to be approved by the Governor; but occasionally, when controversies ran high between an Assembly and a Governor, the former would send an Agent without consulting the latter. This was deemed an irregularity, and though tolerated by the Ministers, it never met with their full approbation; yet it was necessary, when a Governor, either bound by his instructions or perverse in his temper, would not allow the complaints or petitions of the Assembly to pass through his hands to the regular Agents. For some time there were two Agents from Massachusetts,

one sent by the Council, and another by the Assembly. It will readily be seen that cases might occur in which an Assembly would have no means of redress, unless they could apply immediately to the British Government by an Agent of their own.

Charles Sumner, Esq.

Sincerely yours,

JARED SPARKS.

RESOLUTION APPOINTING MR BURKE AGENT OF THE
HOUSE OF ASSEMBLY OF NEW YORK.

"Assembly of New York, December 21st, 1770.

"The Speaker acquainted the House that since the last Session he had received certain accounts, by letters from London, of the death of Robert Charles, Esq., late Agent for this Colony:

"Whereupon the House being of opinion that it is highly necessary to have an Agent to transact the affairs of this Colony at the Court of Great Britain,

"Resolved, therefore, nem. con.,

"That Edmund Burke, Esq., of London, be and hereby is appointed Agent for this Colony at the Court of Great Britain, in the room of Robert Charles, Esq., deceased; and that for his services as such, there be allowed to him, the said Edmund Burke, Esq., at the rate of five hundred pounds per annum."

Mr Burke continued to be the Agent of the Colony till 1775, when all intercourse between the two countries was broken off.

A BRIEF STATEMENT, ETC.

It certainly is greatly to be lamented that after the unfortunate experience of the last fifteen years the Colonial office, whose dislike to the appointment of Agents has been so strong, should at this time be most imperfectly informed upon, or be very indifferent to what is passing in Canada. Its present sources of information are the representations of a Governor-General, who publicly argues against the principles of Government, to which the people of this country, as well as of Canada, are most attached—the reports of the disappointed instruments of Lord Sydenham's corrupt and unsuccessful policy, and the prejudiced statements of defeated land jobbers. For nine months Sir C. Metcalf has kept the chief offices of the Government vacant—it being actually more dangerous to fill them with men holding his opinions than to keep them vacant—and he has substituted his own inefficient, though certainly mild Dictatorship, for that system of Responsible Government which the people of Canada had hoped, upon the restoration of a Constitution, to have seen established among them. He has engaged the people in a discussion upon the

principles of Government, in which the experience of the neighbouring States cannot be disregarded; he has violated all settled opinions; and perhaps, unintentionally, has most seriously checked the improvement of the province. These are grave and general charges, but they can be proved by the most precise and complete evidence. All true Conservatism in politics is in the process of being more weakened than it was between the years 1836 and 1842, for no man understands the system which is sought to be forced upon him, while he is assured that the usages and practices of the English Government in England are unfit for the political guidance of British subjects in Canada.

The dispute in which Sir C. Metcalf has engaged is expressed by the House of Assembly in an Address to him in these terms:—

“We, her Majesty’s dutiful and loyal subjects, &c., beg leave to represent to your Excellency the deep regret we feel at the retirement of certain Members of the Provincial Administration on the question of their right to be consulted, on what we unhesitatingly avow to be the Prerogative of the Crown—appointments to office; and further to assure your Excellency that their advocacy of this principle entitles them to our confidence, being in strict accordance with the principles embraced in the Resolutions adopted by the Legislative Assembly on the 3rd of September, 1841. That this House, in dutiful submission to their Most Gracious Sovereign, and with the utmost respect for the exalted station and high character of your Excellency, is most anxious to guard against any misconstruction which possibly might be placed upon the affirmative declaration of their opinion upon this delicate and most vitally important Constitutional question, and, therefore, most humbly beg leave to disclaim, in a negative form, any desire that the head of the Government should be called

upon to enter into any stipulation, as to the terms upon which a Provincial Administration may deem it prudent, either to accept of, or to continue in office. That mutual confidence, which is essential to the well-being of any Government, necessarily presumes that they are understood, while a due respect for the prerogative of the Crown, and proper constitutional delicacy towards her Majesty's Representative, forbid their being expressed."

The majority of sixty to seven on the Resolution for this Address included six Members of the Administration who had resigned; one Member being absent, who approved of it, and one absent, who dissented from it and who has alone continued in office.

There is nothing irregular — nothing contrary to the practice of the English Government—insisted on in this Resolution. The practice opposed to it, which the Governor-General seeks to establish, is exactly that which was condemned in the Administration of Lord Bute, and which was thus described by Mr Burke in his 'Thoughts on the Cause of the Present Discontents.'

"The first part of the Reformed plan," says Mr Burke, "was to draw a line which should separate the Court (Governor-General) from the Ministry. Hitherto these names (in England) had been looked upon as synonymous; but for the future, Court and Administration were to be considered as things totally distinct. By this operation, two systems of Administration were to be formed;—one which should be in the real secret and confidence; the other merely ostensible to perform the official and executory duties of the Government. The latter were alone to be responsible; whilst the real advisers, who enjoyed all the power, were effectually removed from all danger. Secondly, a party under these leaders was to be formed in favour of the Court (Governor-General)

against the Ministry: this party was to have a large share in the emoluments of Government, and to hold it totally separate from, and independent of, the ostensible Administration. The third point, and that on which the success of the whole scheme ultimately depended, was to bring Parliament to an acquiescence in this project. Parliament was therefore, to be taught, by degrees, a total indifference to the persons, rank, influence, abilities, connexion, and character of the Ministers of the Crown."

This is an exact statement of what has occurred in Canada. Persons have been consulted, and their advice acted on, without such advice being communicated to those whom the House of Assembly would have held to be responsible for its being followed—the Governor-General has insisted that an Administration ought to remain in office, though he acts so as to deprive it of the support of public opinion, though that opinion is necessary to aid those jointly administering the Government with him;—the persons executing the official duties of the Government are to be held responsible, and the real advisers are to enjoy power and patronage, removed from the danger of responsibility.

A similar dispute to the above has also occurred in Nova Scotia, where Lord Falkland proves how little he understands of the British system of Representative Government, when he complains "that the practical value of the admission made by his ex-Ministers, of his right to make appointments, amounts to nothing if they are justified in seceding from the Council, and opposing his Administration, on his making an appointment (in the Council) which they deem *injurious* to their influence." (Letter of Lord Falkland, December 25, 1843).—The answer of Mr Fox, who certainly knew something more of Representative Institutions than Lord Falkland, to a similar remark, was—"That he did not mean to dispute

the right of the King to nominate his own Minister, but that those who went into office on public principles, not only had a right, but it was their duty to be satisfied that none were introduced into the Cabinet hostile to their principles." ('Annual Register,' 1782, p. 185).—It is certainly not in America that a renewal of such discussions can occur with advantage, nor is it at all probable that a different decision will be made to that which has long governed us in this country.

It is true that Lord Stanley represented to the House of Commons, no doubt from one of those sources of mischief which have so often misled men in his position, that the contest in Canada related to a demand on the part of the ex-Ministers to have the patronage of the Crown delivered to them under "the hand and seal" of the Governor-General. The truth of this representation is denied by the ex-Ministers, and is not maintained by any of their opponents. It must, therefore, be treated as a most unfortunate error. But supposing it to have been an accurate account of the original dispute with the Governor-General, still, after the Resolution of the House of Assembly, and the assent of the ex-Ministers to that Resolution, it is idle to argue over again any dispute previous to and inconsistent with that Resolution. By assenting to that Resolution, the ex-Ministers abandoned any demand, if they had made any, inconsistent with it. Instead of there being a dispute between them and the Governor-General, the contest which has been most recklessly and unadvisedly provoked, is one between Sir C. Metcalf and the House of Assembly. In this contest the House, as on former occasions in Lower Canada, has assumed a position consistent with the principles and practice of our House of Commons, by whose usages and precedents they have always been guided, to the advantage of a wise Government, if any such had ever existed in the province.

The preservation, nevertheless, of the connexion between this country and Canada can be continued to the perfect satisfaction of all parties, and without even the shadow of conflict with the Imperial authorities ; but to accomplish this it is necessary to act with a knowledge of local opinions. It will be found to be a vain effort to enforce big-blown Colonial-office notions of power and prerogative acting independently of popular opinion, and often adversely to it, in disputes which are purely provincial. The merit of Mr Burke was that he pointed out the danger of such attempts, and in the American contest represented the feelings of his constituents accurately, though no doubt in very unpalatable language. It could not have been satisfactory to many to have heard him declare,—“That the American people were never designed by heaven for monarchy—were in their natures adverse to monarchy—and had never had any other than the smell of monarchy at the distance of 3,000 miles.” (*Parl. Hist.*, v. 23, p. 262).—Yet if this opinion had been entertained by members of the Administration, their gravest faults would have been avoided. But the source of our errors in America is, that official and demi-official men reason on their experience of opinions in England, and assume that they can subdue opinion in America to their pre-conceived fancies. Party politicians in England do the same, and the sympathies of the House of Commons are without difficulty enlisted on their side. Thus a policy is insisted on which finds no support in the institutions of any part of North America, and which, to the vast majority of the people, appears irrational and oppressive.

An attempt has been made to turn attention from the question in dispute to a discussion of the personal merits of Sir C. Metcalf, the excellence of his private character, his morality, his humanity, his kindness of disposition, and his sense of justice ; in all which particulars he presents a marked contrast to

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nearly all his predecessors—more especially to Lord Sydenham. These excellencies must be admitted, but they do not in the slightest degree decide the merits of a Constitutional dispute, in which the population of Canada have to protect themselves in its determination from the conduct of such Governors as those with whom Sir C. Metcalf is thus compared.

T. F.